

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl.W.P.No. 190 of 2005

DATE OF DECISION: September 14 , 2006.

Rajinder Singh

Vs.

State of Punjab

CORAM: HON'BLE MR.JUSTICE M.M.AGGARWAL.

PRESENT: Mr. V.K.Jindal, Advocate for the petitioner.

Mr.G.S.Bhandari, Deputy Advocate General, Punjab

JUDGMENT

This is a petition for release of Rajinder Singh petitioner from custody.

Petitioner is stated to be a convict for offence under Section 302 etc IPC in case FIR No. 79 dated 10.6.1986 of Police Station Adampur and is undergoing imprisonment for life and is confined in Central Jail, Jalandhar.

As per the petitioner, he has become entitled to be released after undergoing requisite period of sentence and his further detention is illegal.

On behalf of the State, reply in the form of Affidavit of Shri Jagjit Singh, Assistant Inspector General of Prisons, Punjab has been filed

to the effect that petitioner had undergone a total period of 9 years 10 months and 19 days as on 27.5.2005. Order copy Annexure R-1 of the State has been produced showing that crime of the petitioner was heinous. He had committed murder of child less than 14 years and he had not completed required sentence of 12 years actual and 18 years with remissions as per Policy Instructions of the State dated 8.7.1991.

Counsel for the petitioner had argued that as per judgment of this Court in Crl.Misc.No.30109 M of 2002 (**Mahender Singh and others Vs. State of Haryana and others**) decided on 24th July, 2003, copy Annexure P-4, the Policy Instructions of the Haryana Government had been set aside and in spite of appeal having been filed by the State of Haryana, no stay was granted by the Hon'ble Supreme Court and petitioner as such had become entitled to be released after 10 years of actual sentence and 14 years of sentence including remissions as per judgment of this Court dated 24.7.2003.

On behalf of the State, it had been argued that the Hon'ble Supreme Court in Writ Petition (Crl.) being No. 135 of 2003 **Anil Sharma Vs. State of Haryana and another** had made order to the following effect:

“No convict serving a life sentence and who has not completed 14 years of imprisonment shall be released without further orders of this Court.”

This order was later on modified as under:

“It is clarified that stay order in the Writ Petition (Criminal)No. 135 of 2003

applies only to the nine convicts mentioned in para 4.4 of that petition. Similarly, the stay order in Writ Petition (Crl.) No. 200 of 2003 will only mean that there shall be no violation of the provision of Section 433 A of the Code of Criminal Procedure.”

On behalf of the State it had been pleaded that in view of the orders of the Hon'ble Supreme Court, the case of the petitioner for premature release cannot be considered as he had been convicted for offence of murder and has not undergone 14 years actual sentence.

Section 433 A of the Code of Criminal Procedure provides as under:

“433-A. Restriction on powers of remission or commutation in certain cases.

Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishment provided by laws or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at

least fourteen years of imprisonment.”

Now there is specific order of the Hon'ble Supreme Court that there should be no violation of provisions of Section 433-A of the Code of Criminal Procedure.

In view of the provisions of Section 433-A Cr.P.C. and latest orders of the Hon'ble Supreme Court and the fact that petitioner has not completed 14 years of actual sentence, this petition is dismissed.

September , 2006
raghav

(M.M.Aggarwal)
Judge